

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

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Refer Reply To:

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PLR-136338-14

Date:

March 27, 2015

Legend

Taxpayer =

Date =

State X =

Parent =

State Y =

Manager =

Manager's Acquirer =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Dear :

This is in reply to Taxpayer's request, pursuant to § 301.9100-3 of the Procedure and Administration Regulations, for an extension of time to make the election under § 831(b)(2)(A)(ii) of the Internal Revenue Code (the "Code").

FACTS

Taxpayer was formed on Date, and became licensed as a captive insurance company in State X. Taxpayer is a wholly-owned subsidiary of Parent, a State Y limited liability company. Taxpayer was initially managed by Manager, which was subsequently acquired by Manager's Acquirer. Taxpayer commenced business in Year 1.

Taxpayer desired to make the election provided by § 831(b)(2)(A)(ii). Taxpayer has consistently conducted its operations as if such an election had been made effective for Year 1. During a recent review of Taxpayer's federal income tax returns, Taxpayer's legal counsel discovered that an election pursuant to § 831(b) was not made for tax years Year 1, Year 2, Year 3, and Year 4. Taxpayer's legal counsel inquired with Taxpayer's various advisors and determined that a miscommunication had occurred among the advisors with respect to the filing of the § 831(b) election. Taxpayer's tax attorney, who was responsible for the preparation and filing of Taxpayer's Year 1 Form 1120-PC, incorrectly presumed that Manager had already made the election. At the same time, Manager assumed that Taxpayer's tax attorney would make the election in the process of preparing and filing Taxpayer's Year 1 Form 1120-PC. Immediately after discovering the failure to file a timely § 831(b) election Taxpayer's treasurer directed Taxpayer's legal counsel to seek this ruling.

Taxpayer's failure to make the election has not been discovered by the Service.

Taxpayer represents that granting relief will not result in a lower tax liability than it would have paid had it filed the election timely. Taxpayer represents that it reported its income for Year 1, Year 2, Year 3, and Year 4 as if it had made a timely election.

REQUESTED RULING

Taxpayer requests a ruling under Treas. Reg. § 301.9100-3 granting it an extension of the time to make the election provided by § 831(b)(2)(A)(ii).

LAW and ANALYSIS

In general, § 831(a) applies to tax insurance companies, other than life insurance companies, on their taxable income. However, § 831(b) provides certain small companies (i.e., companies, including members of their control groups, that do not have the greater of net written premiums or direct written premiums for the taxable year in excess of \$1,200,000) an election to be subject to tax on their taxable investment income only. The election applies to the taxable year for which the company made it and, as long as the company continues to qualify, for all subsequent taxable years unless revoked with the consent of the Secretary.

The time and manner to make this election is not prescribed by statute but rather is prescribed by Treas. Reg. § 301.9100-8. Pursuant to Treas. Reg. § 301.9100-8(a)(2), the election is to be made by the due date (taking into account any extensions of time to file obtained by the taxpayer) of the tax return for the first taxable year for which the election is to be effective by attaching a statement to the tax return containing the information specified in Treas. Reg. § 301.9100-8(a)(3). Accordingly, the § 831(b)(2)(A)(ii) election is a regulatory election. See, Treas. Reg. § 301.9100-1(b).

Under Treas. Reg. § 301.9100-1(c), the Commissioner may grant a reasonable extension of time (but no more than six months except in the case of a taxpayer who is abroad) under the rules set forth in Treas. Regs. §§ 301.9100-2 and 301.9100-3 to make a regulatory or statutory election.

Treas. Reg. § 301.9100-2 does not provide relief for Taxpayer to make an election under § 831(b)(2)(A)(ii) for any of the Years for which relief is sought. Requests for extensions of time for regulatory elections that do not meet the requirements of Treas. Reg. § 301.9100-2 must be made under Treas. Reg. § 301.9100-3. Treas. Reg. § 301.9100-3(a) provides that certain extension requests require the taxpayer to establish to the satisfaction of the Commissioner that it "acted reasonably and in good faith" and that "the grant of relief will not prejudice the interests of the Government."

Under Treas. Reg. § 301.9100-3(b), a taxpayer is deemed to have acted reasonably and in good faith if it:

- Requested relief before the failure to make the election was discovered by the Service;
- Failed to make the election because of events beyond the taxpayer's control;
- Failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the need for the election;
- Reasonably relied on written advice from the Service; or
- Reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Under Treas. Reg. § 301.9100-3(b)(2), a taxpayer will not be considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not: (i) competent to render advice on the regulatory election; or (ii) aware of all relevant facts.

Under Treas. Reg. § 301.9100-3(b)(3), a taxpayer is deemed to not have acted reasonably and in good faith if it:

- Seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 and the new position requires or permits a regulatory election for which relief is requested;
- Was informed in all material respects of the required election and related tax consequences, but chose not to file the election; or
- Uses hindsight in requesting relief.

The Commissioner will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be prejudiced by the granting of relief. Treas. Reg. § 301.9100-3(c)(1).

The interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking into account the time value of money). Treas. Reg. § 301.9100-3(c)(1)(i).

The interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made, or any taxable years that would have been affected by the election had it been timely made, are closed by the period of limitations on assessment under section 6501(a) of the Code. In those cases, the Service may condition a grant of relief on the taxpayer providing the Service with a statement from an independent auditor (other than an auditor providing an affidavit pursuant to Treas. Reg. § 301.9100-3(e)(3)) certifying that the interests of the Government are not prejudiced. Treas. Reg. § 301.9100-3(c)(1)(ii).

Treas. Reg. § 301.9100-1(a) cautions that granting an extension of time to make an election is not a determination that the taxpayer is otherwise eligible to make the election.

Based solely on Taxpayer's representations, the additional information required under Treas. Reg. § 301.9100-3(e), and the statement described in Treas. Reg. § 301.9100-3(c)(1)(ii), Taxpayer qualifies for an extension of time to make the election under § 831(b)(2)(A)(ii). Taxpayer is deemed to have acted in good faith, as defined by § 301.9100-3(b), and the grant of relief will not prejudice the interests of the Government because Taxpayer will not have a lower tax than if the election had been timely made.

RULING

Accordingly, under Treas. Reg. § 301.9100-3, Taxpayer is granted an extension of time until 60 days following the date of this letter to make the election provided by § 831(b)(2)(A)(ii) effective for Year 1, Year 2, Year 3, and Year 4.

CAVEATS

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as expressly provided above, no opinion is expressed or implied concerning the federal income tax consequences of any other aspects of any transaction or item of income and no ruling granted as to whether Taxpayer qualifies as an insurance company under Part II of subchapter L or is otherwise eligible to make the election provided by § 831(b)(2)(A)(ii).

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with a power of attorney on file in this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

JOHN E. GLOVER
Senior Counsel, Branch 4
Office of the Associate Chief Counsel
(Financial Institutions & Products)